

1 LAURENCE F. PULGRAM (CSB No. 115163)
lpulgram@fenwick.com
2 LIWEN A. MAH (CSB No. 239033)
lmah@fenwick.com
3 FENWICK & WEST LLP
555 California Street, 12th Floor
4 San Francisco, CA 94104
Telephone: (415) 875-2300
5 Facsimile: (415) 281-1350

6 PATRICK E. PREMO (CSB NO. 184915)
ppremo@fenwick.com
7 HENRY Z. CARBAJAL III (CSB No. 237951)
hcarbajal@fenwick.com
8 DENNIS M. FAIGAL (CSB NO. 252829)
dfaigal@fenwick.com
9 FENWICK & WEST LLP
Silicon Valley Center
10 801 California Street
Mountain View, CA 94041
11 Telephone: (650) 988-8500
Facsimile: (650) 938-5200
12

13 Attorneys for Plaintiff SUCCESSFACTORS, INC.

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 OAKLAND DIVISION
17

18 SUCCESSFACTORS, INC., a Delaware
corporation,

19 Plaintiff,

20 v.

21 SOFTSCAPE, INC., a Delaware corporation,
22 and DOES 1-10, inclusive,

23 Defendants.
24
25
26

Case No. CV 08 1376 CW

**DECLARATION OF LIWEN MAH IN SUPPORT OF
SUCCESSFACTORS, INC.'S MOTION FOR
ADMINISTRATIVE RELIEF TO FILE UNDER SEAL
PLAINTIFF SUCCESSFACTORS, INC.'S BRIEF
AND DECLARATION EXHIBITS IN SUPPORT OF
MOTION TO COMPEL PRODUCTION OF
DOCUMENTS, FURTHER INTERROGATORY
ANSWERS AND PROPER CONFIDENTIALITY
DESIGNATIONS**

Date: September 3, 2008
Time: 10:00 A.M.
Judge: Hon. Bernard Zimmerman
Place: Courtroom G, 15th Floor

27 ///

28 ///

1 I, Liwen Mah, declare as follows:

2 1. I am an associate with the law firm of Fenwick & West LLP, counsel to Plaintiff
3 SuccessFactors, Inc. I am an attorney admitted to practice before this Court. I submit this
4 declaration in support of SuccessFactors' Motion for Administrative Relief to File Under Seal
5 Plaintiff Successfactors, Inc.'s Brief and Declaration Exhibits in Support of Motion to Compel
6 Production of Documents, Further Interrogatory Answers and Proper Confidentiality
7 Designations. I make this declaration based on my personal knowledge, except where otherwise
8 indicated, and if I am called as a witness, I would and could testify competently to the matters
9 contained herein.

10 2. On April 23, 2008, the Court entered a Protective Order in this case. Pursuant to
11 section 10 of that order, any document filed in this action containing confidential information
12 must be filed under seal in accordance with Civil Local Rule 79-5.

13 3. Accordingly, SuccessFactors respectfully requests that it be allowed to file under
14 seal the following portions of the Memorandum of Points and Authorities ("Motion to Compel
15 Brief") and Exhibits to the Declaration of Henry Z. Carbajal III ("Carbajal Decl.") in Support of
16 SuccessFactors, Inc.'s Motion to Compel Production of Documents, Further Interrogatory
17 Answers and Proper Confidentiality Designations.

18 4. Under the terms of the Protective Order, Softscape designated lines 356:1-357:6,
19 357:8-9, 360:7-360:24, 361:8-9, 361:12-13, 361:22-362:1, 362:4-6, 362:8-13, 362:18-19 of the
20 Transcript of the May 30, 2008 Deposition of David Watkins ("5/30/08 Watkins Transcript") as
21 "Highly Confidential—Attorneys' Eyes Only." Softscape further designated lines 362:24-25,
22 368:8-10, 368:19-21, 368:23-369:3, 369:8-12, 369:16-20, and 370:10-25 as "Confidential."
23 Plaintiff has attached excerpts of the 5/30/08 Watkins Transcript, including these lines, as
24 Exhibit 2 to the Carbajal Declaration. These lines contain business and employee information that
25 Softscape contends is confidential. In addition, Plaintiff refers to this information in lines 3:16-21
26 of its Motion to Compel Brief. Plaintiff requests that lines 3:16-21 of its Motion to Compel Brief
27 and the above portions of Exhibit 2 to the Carbajal Declaration be filed under seal.

28 5. Under the terms of the Protective Order, Softscape designated lines 282:1-285:15

1 of the 5/30/08 Watkins Transcript as “Highly Confidential—Outside Attorneys’ Eyes Only.”
2 Plaintiff has attached excerpts of the 5/30/08 Watkins Transcript, including these lines, as
3 Exhibit 2 to the Carbajal Declaration. These lines contain information about the activities of
4 David Watkins that Softscape contends is confidential. In addition, Plaintiff refers to this
5 information in lines 4:9-10 and 17:3-5 of its Motion to Compel Brief. Plaintiff requests that lines
6 4:9-10 and 17:3-5 of its Motion to Compel Brief and the above portions of Exhibit 2 to the
7 Carbajal Declaration be filed under seal.

8 6. Under the terms of the Protective Order, Softscape designated lines 227:23-25 of
9 the Transcript of the May 29, 2008 Deposition of David Watkins (“5/29/08 Watkins Transcript”)
10 as “Confidential.” Plaintiff has attached excerpts of the 5/29/08 Watkins Transcript, including
11 these lines, as Exhibit 3 to the Carbajal Declaration. These lines contain business information
12 about New Millenium Shoe that Softscape contends is confidential. In addition, Plaintiff refers to
13 this information in lines 3:25 and 14:21-22 of its Motion to Compel Brief. Plaintiff requests that
14 lines 3:25 and 14:12-13 of its Motion to Compel Brief and the above portions of Exhibit 3 to the
15 Carbajal Declaration be filed under seal.

16 7. Under the terms of the Protective Order, Softscape designated lines 238:4-14 of
17 the 5/29/08 Watkins Transcript as “Highly Confidential—Outside Attorneys’ Eyes Only.”
18 Plaintiff has attached excerpts of the 5/29/08 Watkins Transcript, including these lines, as
19 Exhibit 3 to the Carbajal Declaration. These lines contain information about the activities of
20 David Watkins that Softscape contends is confidential. In addition, Plaintiff refers to this
21 information in lines 4:12-16 of its Motion to Compel Brief. Plaintiff requests that lines 4:12-16 of
22 its Motion to Compel Brief and the above portions of Exhibit 3 to the Carbajal Declaration be
23 filed under seal.

24 8. Under the terms of the Protective Order, Softscape designated lines 112:1-8,
25 112:11-15, 127:4-5, 127:22-25, 128:3-6, 128:16, 152:2-3, 152:13-22, 179:18-19, 179:22-23,
26 180:1, 229:5-16 of the 5/29/08 Watkins Transcript as “Highly Confidential—Attorneys’ Eyes
27 Only.” Softscape further designated lines 43:5-13, 112: 9-10, 180:2-5, 203:1-25, 227:23-25,
28 228:3-5, 228:8-229:4, 229:17-19, 229:25, 234:1-6, 234:8-12, 234:22-24, and 262:1 as

1 “Confidential.” Plaintiff has attached excerpts of the 5/29/08 Watkins Transcript, including these
2 lines, as Exhibit 3 to the Carbajal Declaration. These lines contain Softscape business information
3 that Softscape contends is confidential. In addition, Plaintiff refers to this information in lines
4 8:1-5, 10:27-28, 13:1, and 22:8:11 of its Motion to Compel Brief. Plaintiff requests that lines
5 8:1-5, 10:27-28, 13:1, and 22:8:11 of its Motion to Compel Brief and the above portions of
6 Exhibit 3 to the Carbajal Declaration be filed under seal.

7 9. Under the terms of the Protective Order, Softscape designated lines 378:7-8,
8 378:11-15, 378:17-21, 378:23-379:13, 379:15-23, 379:25-380:16, 380:19-21, 380:23-25 of the
9 5/30/08 Watkins Transcript as “Highly Confidential—Attorneys’ Eyes Only.” Plaintiff has
10 attached excerpts of the 5/30/08 Watkins Transcript, including these lines, as Exhibit 2 to the
11 Carbajal Declaration. These lines contain business and employee information that Softscape
12 contends is confidential. In addition, Plaintiff refers to this information in lines 12:24-27 of its
13 Motion to Compel Brief. Plaintiff requests that lines 12:24-27 of its Motion to Compel Brief and
14 the above portions of Exhibit 2 to the Carbajal Declaration be filed under seal.

15 10. Softscape filed the March 26, 2008 Declaration of David Watkins in Opposition to
16 Motion to Strike [Docket No. 58] under seal. The unredacted version is attached as Exhibit 1 to
17 the Carbajal Declaration. Plaintiff requests that Exhibit 1 to the Carbajal Declaration be filed
18 under seal.

19 11. Under the terms of the Protective Order, Softscape designated its Responses to
20 Plaintiff’s First Set of Interrogatories and its Amended Responses to Plaintiff’s First Set of
21 Interrogatories as “Confidential” in their entirety. These are attached as Exhibits 11 and 12 to the
22 Carbajal Declaration. In addition, Plaintiff refers to the content of these Exhibits in lines 14:12-13
23 of its Motion to Compel Brief. Plaintiff requests that lines 14:12-13 of its Motion to Compel Brief
24 and the Exhibits 11 and 12 to the Carbajal Declaration be filed under seal.

25 12. Under the terms of the Protective Order, Softscape designated various Powerpoint
26 presentations it has produced as “Confidential” or “Highly Confidential—Attorneys’ Eyes Only.”
27 These are attached as Exhibits 15 to 18 to the Carbajal Declaration. In addition, Plaintiff refers to
28 the metadata of these presentations in lines 6:4-5 and 6:18-7:1 of its Motion to Compel Brief.

1 Plaintiff requests that lines 6:4-5 and 6:18-7:1 of its Motion to Compel Brief and the Exhibits 15
2 to 18 to the Carbajal Declaration be filed under seal.

3 13. On July 22, 2008 and July 25, 2008, Softscape sent e-mails to SuccessFactors’
4 counsel regarding discovery issues. Although Softscape did not expressly designate the content as
5 confidential, the e-mails include information that Softscape might assert is proprietary business
6 information. These e-mails are attached as Exhibits 19 and 22 to the Carbajal Declaration. In
7 addition, Plaintiff refers to the content of these e-mails in lines 7:6-8 of its Motion to Compel
8 Brief. Plaintiff requests that lines 7:6-8 of its Motion to Compel Brief and the Exhibits 19 and 22
9 to the Carbajal Declaration be filed under seal.

10 14. Under the terms of the Protective Order, Softscape designated its June 20, 2008
11 letter from Jeffrey Ratinoff to Henry Carbajal as “Highly Confidential—Attorneys’ Eyes Only.”
12 This letter is attached as Exhibit 21 to the Carbajal Declaration. Plaintiff requests that Exhibit 21
13 to the Carbajal Declaration be filed under seal.

14 15. Under the terms of the Protective Order, Softscape designated the telephone
15 records Bates numbered SSHC00654 as “Highly Confidential—Outside Attorneys’ Eyes Only.”
16 These records are attached as Exhibit 28 to the Carbajal Declaration. Plaintiff requests that
17 Exhibit 28 to the Carbajal Declaration be filed under seal.

18 16. The lines of the Motion to Compel Brief and the Exhibits enumerated above are
19 the only portions of SuccessFactors’ filing to be filed under seal.

20 17. SuccessFactors will lodge with the Clerk a sealed copy of the above documents.

21 18. SuccessFactors will notify counsel for Softscape of their obligation under Civil
22 L.R. 79-5(d) to file a declaration supporting the confidentiality of its information listed above.

23 19. Pursuant to Civil L.R. 79-5, SuccessFactors intends to file publicly or withdraw
24 from the record any document that it requested to be filed under seal based on confidentiality
25 designations if Softscape withdraws those designations or if the Court denies SuccessFactors’
26 Motion to Seal.

1 I declare under penalty of perjury under the laws of the United States of America and the
2 State of California that the foregoing is true and correct, and that this declaration was executed
3 this 30th day of July 2008, in San Francisco, California.
4

5 /s/ Liwen Mah

6 Liwen Mah
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FENWICK & WEST LLP
ATTORNEYS AT LAW
SAN FRANCISCO